IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1918 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRADIPKUMAR R PANDYA

Versus

DY.INSPECTOR GENERAL OF POLICE

Appearance:

1. Special Civil Application No. 1918 of 1989

NOTICE SERVED for Petitioner No. 1

MR UDAY BHATT, AGP, for Respondent No. 1-2

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 22/01/2003

ORAL JUDGEMENT

1. The petitioner, who was working as Police Sub-Inspector, was proceeded against by holding a preliminary inquiry followed by a regular inquiry and came to be exonerated from the charges of misconduct

against him by the Inquiry Officer by order dated October 12, 1988 (Annexure-D). The said order was taken in suo motu revision in exercise of powers under Section 27-A of the Bombay Police Act, by Deputy Inspector General of Police, Ahmedabad Range, and was set aside by order dated January 9, 1989 (Annexure-E), with a further direction to hold de novo proceedings against the petitioner. This order has aggrieved the petitioner and, hence, he has approached this Court with this petition under Article 226 of the Constitution of India, seeking the following main reliefs :-

"(a) Be pleased to admit this petition;

(b) Be pleased to quash and set aside the order at Annexure-E passed by the respondent No.1, by which he ordered to hold fresh inquiry against the petitioner, by issuing a suitable writ, direction and/or order under Article 226 of the Constitution of India;

(c) Be pleased to grant interim injunction restraining the respondent No.2, his agents and/or servants, from acting further against the petitioner on the basis of the order at Annexure-E passed by the respondent No.1, by way of interim relief, till this petition is finally heard and decided by this Hon'ble Court;"

2. The petitioner has raised several grounds, one of which is that the petitioner was not given any audience or even notice before passing of the impugned order by Deputy Inspector General of Police, respondent No.1 herein. At that initial stage, while issuing notice, ad-interim relief in terms of paragraph 16(c) was granted, which is still continuing.

3. Respondent No.1 has filed affidavit-in-reply dealing with the contentions raised in the petition by the petitioner in detail.

4. The petitioner was formerly represented by Advocate (P.B. Majmudar,J., as he then was). A notice was, therefore, served on the petitioner by this Court on April 19, 2001. He has, however, not appeared before this Court either in person or through another Advocate. Respondents are represented by learned Assistant Government Pleader, Mr. Bhatt.

5. The petition deserves to be allowed on the sole ground of violation of principles of natural justice. It

has been categorically contended by the petitioner that he was not given any hearing or notice before passing of the impugned order by respondent No.1. Scrutiny of the impugned order also indicates that the order was passed on basis of the material on record. It does not reflect, in any manner, that the petitioner was either served with a notice or was given any audience while setting aside the order of the Inquiry Officer exonerating the petitioner. The affidavit-in-reply filed by respondent No.1 also does not indicate that audience was given to the petitioner. It is, therefore, amply clear that the impugned order setting aside the order of the Inquiry Officer exonerating the petitioner came to be passed by respondent No.1 without following the principles of natural justice. The order, therefore, cannot be permitted to stand. The petition is allowed. The order dated the 9th January, 1989, passed by the Deputy Inspector General of Police, Ahmedabad Range, (Annexure-E) is, therefore, quashed and set aside. It is clarified that, it would be open for the respondents to take an appropriate decision in the matter after affording audience to the petitioner. Rule is made absolute with no order as to costs.

[A.L. DAVE, J.]

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